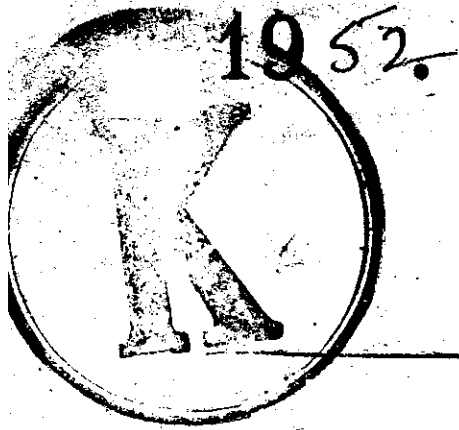


O/Cotton Seed/52



File No. 32/52

Legal Department

Gr BRANCH

Subject:—

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Opinion on the

Cotton Seed

1952

O/cotton Seed/52

File No.

32/52

C O N T E N T S.

Legal Department File No.0. Cotton Seed/1952.

Sr No.	R.I./-	O.No.	Subject	Pages
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Opinion on the Cotton Seed.

1-

Question whether the Govt. of India Notification dated 6-9-51 affects the powers of the Govt. in regard Cotton Seed under the Bombay Essential Commodities and Cattle(Control)Act, 1946 or any order issued thereunder in regard to cottonseed.

9-10

2.

G-128
25-3-52

Question whether is is open to the State Govt. to issue orders in respect of Cotton Seed under the Bombay Essential Commodities and Cattle-(Control) Act, 1946.

11-16

M.R.D.
24-7-56
C.5

Q.Mh
3/8
NCD
3/8

Office of the R.L.A.

Notification No.F.30-6/50 EP, dated 5th September 1951 issued by the Government of India provides that no order made or deemed to have been made under section 3 of the Essential Supplies(Temporary Powers) Act, 1946, or under any corresponding law in any State except the State of Punjab shall have effect so as to prohibit or restrict the movement of cotton seed from any place in that State to any other place within or outside the State or so as to regulate or control the price, production, movement or distribution thereof in any manner whatsoever. This Notification is issued under Section 3 of the Essential Supplies(temporary Powers) Act, 1946, passed by the Central Legislature when the Government of India Act, 1935, was in operation. Under that Act, production, supply and distribution of goods was item No.29 in List II in the Seventh Schedule to the Said Act. "Trade and commerce within the Province" was item No.27 in the same list. The subject-matter of both the items was in List II and was within the scope of the Provincial Legislature. Under section 100 of the said Act, the Central Legislature had no power to legislate in regard to the subject-matter of the said items. During the war under the Defence of India Act and the Rules made thereunder the Centre no doubt had power in regard to the subject-matter of the said items. But the power under the said Act and Rules expired after the termination of the War. As however the emergency in regard to the food and other commodities continued, the British Parliament passed the Central Government and Legislature Act, 1946, (9 & 10 Geo.VI ch.39) Section 2 of the said Act provided that notwithstanding anything contained in the Government of India Act the Indian(i.e. Central) Legislature during the period mentioned in section 4 shall have power to make laws

with respect to the matters mentioned in section 2. One of the matters which is mentioned in sub-section (4) is as follows: trade and commerce (Whether or not within a Province) in and the production, supply and distribution of cotton and wollen textiles, papers, foodstuffs including edible oil seeds and oils. Sub-section(4) of section 2 of the said Act provides that sub-section(2) of section 107 of the Government of India Act, 1935, shall apply in relation to a law enacted by virtue of the said Act. It does not provide that sub-section(1) of section 107 will also apply. Sub-section(2) of section 107 of the Government of India Act, 1935, provided that where a Provincial law with respect to any of the matters enumerated in the Concurrent Legislative List contained any provision repugnant to the provisions of an earlier law or existing law with respect to that matter, such Provincial law must be reserved for the assent of the Governor General. Sub-section (1) of section 107 of the Government of India Act makes a Provincial law relating to any of the matters in the Concurrent List void, if it is repugnant to a Dominion law. But this sub-section was not made applicable by the British Parliament to any law made by the Central Legislature relating to trade and commerce in a Province and the production, supply and distribution of commodities referred to in section 2(1)(a) of the Parliamentary enactment referred to above. The result is, in regard to those matters both the Central and Provincial Legislatures could make laws, but if the Provincial law was repugnant with a Central Act in force at that date, it had to be reserved for the assent of the Governor General. It is true that sub-section(2) of section 107 provides that the Central Legislature may legislate with respect to the matter in regard to what the Province

may have made a law. But unless section 107(1) was made applicable, such law of the Central Legislature will not over-rule a Provincial law. It is true that the question would have been different if the insertion of cotton seed in the Essential Supplies(Temporary Powers) Act, 1946, had been made after the new Constitution had come into force. In that case such law would have been made by virtue of Article 369 of the Constitution and then under Article 251 of the Constitution, the Provincial law would have been in operative. But that is not the present position. The insertion of cotton seed in the Central Act was made in 1949 in pursuance of the powers given by the British Parliament by 9 & 10 Geo. VI ch. 39. The said Act as stated before did not apply the provisions of section 107(1) of the Government of India Act to any Acts passed by the Central Legislature in pursuance of the said power.

2. As is shown in the preamble of the Essential Supplies(Temporary Powers) Act, 1946, the said Act was passed by the Central Legislature on 30th September, 1946. Section 2 of the Act defines "essential commodities". In the Act when it was passed it did not include cotton seed as an essential commodity. It is therefore clear that on 30th September 1946 the Central Government had no right to pass any orders regarding cotton seed. On the same day the Bombay Essential Commodities and Control Act, 1946, passed by the Bombay Legislature was published after receiving the assent of the Governor General. In schedule I to the Act 'cotton seed' has been specifically mentioned as an essential commodity. In exercise of the powers given by section 4 of the Act the Government of Bombay has made orders regarding cotton seed. By an amending Act- the Essential Supplies(Temporary Powers) (Second Amendment) Act, 1949, the Central Legislature added "cotton seed" as one of the essential commodities mentioned

in the Act of 1946. This Amending Act was also in exercise of the powers given by the Central Government and Legislature Act, 1946(9 & 10 Geo VI ch. 39). As in the case of the main Act, the Amending Act had also a limited scope in relation to trade and commerce within the Province and production, supply and distribution of goods. In other words it could only attract the operation of sub-section(2) of section 107 of the Government of India Act and not sub-section(1) of that section. It cannot therefore invalidate or make void the earlier Provincial law which had received the assent of the Governor General or result in depriving the Provincial or State Government of a power exercisable under its own Act. The notification referred to in para. 1 above has been made by the Central Government under its power under section 3 of the Essential Supplies (Temporary Powers) Act of 1946 as amended by Act XLIX of 1949. As the said Act cannot affect the powers of the Government of Bombay in regard to cotton seed under the Bombay Act, the notification issued by the Central Government under its own Act would not also have any effect so far as the powers of the Government of Bombay are concerned.

3. On another ground also the notification issued by the Central Government has no effect so far as Bombay is concerned. What the Central Government has purported to do is to set aside or repeal the entry relating to cotton seed which occurs in Schedule I to the Bombay Act, and all orders issued by the Government of Bombay under section 4 of its own Act. Whatever powers the Central Govt. has under its own Act, it has no power to repeal the provisions of a Bombay Act and the orders issued thereunder by means of a notification. The reference in the letter of the Government of India dated 6th September 1951 to Article 301 of the Constitution is

not relevant so far as this case is concerned. It is true that the said Article Provides for free trade and commerce throughout India. But Article 304 provides that reasonable restrictions can be imposed by a State and Article 305 saves all existing laws. Article 301 has ~~has~~ therefore no application to the present case. In the present case the restrictions on the movement on cotton seed in Bombay are zone-wise and do not come within the purview of Article 301.

4. For the above reasons the Government of India may be informed that the notification issued by it on 6th September, 1951 does not affect the powers of the Government of Bombay in regard to cotton seed under the Bombay Act or any orders issued under the said Act in regard to cotton seed.

Sd/-J.R. Dhurandhar.

Remembrancer of Legal Affairs.

H.M(Law and C.S.D.)

H.M. desires that the Adv. General should be requested to give his opinion on the point raised in the above note. As the matter is immediate, he should be requested to do so immediately.

Sd/- J.R.D.
20/10/51

U.O.R. to Adv, Genl.

The Adv. General agrees with the above view.

Sd/-J.R.D.
22/10/51

M.R.D.
24-7-56
C.4

The draft cotton Seeds(Removal of Control) Order, 1952 at pp. 5-7 ante is substantially the same which was considered in R.L.A.'s opinion of 20th October 1951x which with which the Advocate General agreed. For the reasons stated in that opinion it would be still open to the State Government to issue orders in respect of Cotton Seed under the Bombay Essential Commodities and Cattle (Control) Act, 1946.

Sd/- 25/3

Additional Secretary to Government.

U.R. to C.S.D., No.G- 128, dated the 25th March 1952.

M.R.D.
24-7-56
C.4